

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MAR 11 2010

DEBORAH PRISE and HEATHER
RADY on behalf of themselves and all
employees similarly situated,

Plaintiffs,

v.

ALDERWOODS GROUP, INC.,

Defendant.

JAMES N. HATTEN, Clerk
By: BH
Deputy Clerk

No. 4:10-MT-3-HLM

(Related to W.D. Pa. Civ. A. No.
06-1641, Judge Joy Flowers Conti)

**ALDERWOODS GROUP, INC.'S MOTION TO ENFORCE
COURT ORDERS COMPELLING OPT-IN PLAINTIFF
LAWRENCE CAMP TO APPEAR FOR DEPOSITION**

COMES NOW Alderwoods Group, Inc. and pursuant to Local Rule 7.1, files this, its Motion to Enforce Court Orders Compelling Opt-In Plaintiff Lawrence Camp to Appear for Deposition. As discussed in detail below, this motion arises from a putative nationwide collective action brought under the Fair Labor Standards Act pending before Judge Joy Flowers Conti in the United States District Court for the Western District of Pennsylvania, *Prise v. Alderwoods Group, Inc.*, Civ. A. No. 06-1641 (W.D. Pa.) ("Prise"). Lawrence Camp ("Plaintiff Camp") is a plaintiff in the *Prise* action. For the following reasons, Alderwoods

requests that the Court enforce the orders of Judge Conti compelling Plaintiff Camp to appear for a deposition in this jurisdiction:

1. Plaintiffs filed the *Prise* action in the Western District of Pennsylvania on December 8, 2006. Plaintiff Camp filed an opt-in consent form, electing to become a party-plaintiff in the *Prise* action, on June 22, 2007. *See* Camp Opt-in Consent, attached hereto as Exhibit “A”.
2. A period of class certification-related discovery began on August 12, 2008. Pursuant to Judge Conti’s discovery order on certification-related discovery and Federal Rules of Civil Procedure 26, 30, 33 and 34, Alderwoods served on Plaintiff Camp written interrogatories, requests for production, and a deposition notice requiring him to appear and testify at a deposition. Plaintiff Camp refused to appear for his deposition.
3. Accordingly, on August 14, 2009, Judge Conti issued an order to Plaintiff Camp compelling him to sit for his deposition by September 11, 2009. *See* Aug. 14, 2009 Order to Camp, attached hereto as Exhibit “B”. The order explicitly warned Plaintiff Camp that if he failed to comply with the order he could be sanctioned and held in contempt of court.
4. Plaintiff Camp still did not comply. Accordingly, Judge Conti issued a second order to Plaintiff Camp dated November 19, 2009, compelling him to sit for

his deposition by January 8, 2010. *See* Nov. 19, 2009 Order to Camp, attached hereto as Exhibit "C".

5. Plaintiffs' counsel attested that they dispatched a process server to personally serve a copy of Judge Conti's November 19, 2009 order on Plaintiff Camp; however, he "refused to accept any documents to be served on him," and telephoned the process server stating that "he is tired of being asked to testify . . ." *See* Status Report and Affidavit of Service, attached hereto as Exhibit "D", at ¶ 3. Plaintiff Camp again refused to comply with Judge Conti's order.

6. As Plaintiff Camp resides in Cartersville, Georgia (*see* Exhibit "D" (Status Report and Affidavit of Service), Alderwoods now seeks enforcement of the order to Plaintiff Camp in this jurisdiction.

7. Alderwoods requests that the Court enter an order compelling Plaintiff Camp to comply with Judge Conti's August 14, 2009 and November 19, 2009 orders by appearing for his deposition on Wednesday, April 7, 2010 at 10:00 a.m. at the offices of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, 950 East Paces Ferry Road, Suite 3000, Atlanta, Georgia 30326, (404) 876-2700.

8. Alderwoods further requests that the order provide that Plaintiff Camp's failure to appear for his deposition will result in Plaintiff Camp being held in contempt of court and taken into custody pending his compliance. *See* Fed. R. Civ. P. 37(b)(2) ("(A) If a party . . . fails to obey an order to provide or permit

discovery” the court may “(vii) treat[] as contempt of court the failure to obey”); *G & C Merriam Co. v. Webster Dictionary Co., Inc.*, 639 F.2d 29, 41 n.13 (1st Cir. 1980) (“Where the court’s purpose is to coerce compliance, the available remedies include imprisonment of the contemnor until he purges himself of the contempt by complying with the order, and a prospective, conditional fine.”); *Fenton v. Walling*, 139 F.2d 608 (9th Cir. 1943) (individual who disobeys court order to answer questions at deposition may be imprisoned for civil contempt until such time as he is ready to comply).

WHEREFORE, Alderwoods respectfully requests that the Court enter an order in the form attached hereto as Exhibit “E” compelling Plaintiff Camp to appear for a deposition on Wednesday, April 7, 2010 at 10:00 a.m. at the offices of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, 950 East Paces Ferry Road, Suite 3000, Atlanta, Georgia 30326, (404) 876-2700. Alderwoods further requests that this Court’s order provide that if Plaintiff Camp fails to comply, he will be held in contempt of court and taken into custody pending his compliance.

Respectfully submitted this 11th day of March, 2010.

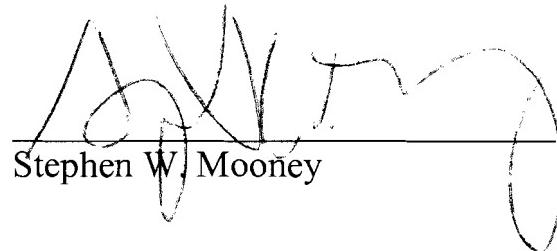
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL

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RULE 5.1B CERTIFICATE OF TYPE, FORMAT AND FONT SIZE

Pursuant to Local Rule 5.1B of the Northern District of Georgia, the undersigned certifies that the foregoing submission to the Court was computer-processed, and prepared in double spaces between lines using Times New Roman font of 14 point size.



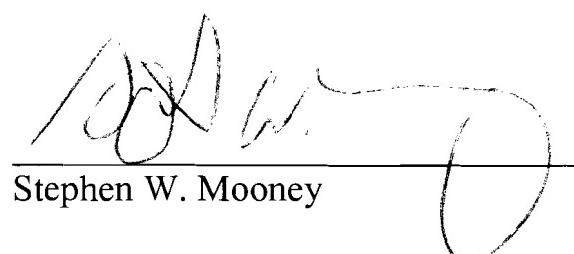
A handwritten signature in black ink, appearing to read "Stephen W. Mooney". The signature is fluid and cursive, with a large, stylized 'S' at the beginning. It is positioned above a horizontal line. Below the line, the name "Stephen W. Mooney" is printed in a clear, sans-serif font.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 11, 2010, a true and correct copy of the foregoing Alderwoods' Motion to Enforce Court Orders Compelling Opt-In Plaintiff Lawrence Camp to Appear for Deposition was served via e-mail and First Class U.S. Mail upon the following:

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